

**Introduced by Senator Alpert**

January 30, 2003

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An act to add Chapter 3.37 (commencing with Section 1596.69) to Division 2 of the Health and Safety Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 106, as introduced, Alpert. Unlicensed providers of child care or supervision: criminal history information.

The California Child Day Care Facilities Act requires the State Department of Social Services to obtain criminal history information on applicants for licenses, special permits, or certificates of approval to operate or manage specified child day care facilities and family day care homes, and on specified persons employed by, residing in, or present in those facilities.

Existing law also requires the department to establish a trustline registry for the registration of persons, 18 years of age or older, who provide child care or supervision, and who are not required to be licensed pursuant to the provisions of the California Child Day Care Facilities Act.

This bill would authorize parents or others who use the services of persons who provide child care or supervision to obtain criminal history information directly from the Department of Justice.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 3.37 (commencing with Section 1596.69) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 3.37. CRIMINAL HISTORY INFORMATION FOR  
UNLICENSED PROVIDERS OF CHILD CARE OR SUPERVISION

1596.69. (a) The Legislature recognizes the need for parents and other persons or organizations who use the services of persons who provide child care and supervision, but who are not required to be licensed pursuant to Section 1596.792, to obtain timely and accurate positive fingerprint identification and criminal history information on those persons. These providers of child care or supervision include, but are not limited to, babysitters, nannies, and mentors.

(b) The Legislature finds and declares all of the following:

(1) While unlicensed providers of child care or supervision may seek to register to be trustline providers pursuant to Chapter 3.35 (commencing with Section 1596.60) and obtain a criminal record clearance in order to provide unlicensed child care or supervision, the processing of fingerprints, through the State Department of Social Services and for the trustline registry, is time consuming.

(2) Not all persons who provide child care or supervision, who are not required to be licensed, register as trustline providers.

(3) There is a need to provide parents, guardians, employers, and other organizations with an alternative means of obtaining criminal history information on persons who provide child care or supervision without a license, and for the processing of fingerprints for, and the obtaining of criminal history information on, these persons to be expedited in order to ensure the protection of children to the maximum extent possible.

(4) This need could be fulfilled if parents and other persons or organizations who use the services of persons who provide child care or supervision, and who are not licensed, could get criminal history information directly from the Department of Justice.

(c) Therefore, the Legislature supports the direct use, by parents and other persons or organizations who obtain child care

1 or supervision services, of the fingerprint live-scan technology,  
2 otherwise known as the California Crime Information Intelligence  
3 System (CAL-CII), of the Department of Justice, for processing  
4 fingerprints and obtaining criminal history information of  
5 unlicensed persons who provide child care or supervision.

6 1596.691. (a) A parent, other person, or organization may  
7 secure from the Department of Justice criminal history  
8 information on a person who seeks to provide, or is providing,  
9 child care or supervision in any capacity for that parent, other  
10 person, or organization, in order to determine whether that person  
11 has ever been convicted of a crime other than a minor traffic  
12 violation punishable pursuant to subdivision (a) of Section 42001  
13 of the Vehicle Code, or has been arrested for any crime for which  
14 the person is required to register as a sex offender pursuant to  
15 Section 290 of the Penal Code, or for violating Section 245 or  
16 273.5 of the Penal Code, or subdivision (b) of Section 273a of the  
17 Penal Code or, prior to January 1, 1994, paragraph (2) of Section  
18 273a of the Penal Code.

19 (b) A parent, other person, or organization seeking the criminal  
20 history information pursuant to this section shall submit directly  
21 to the Department of Justice two sets of fingerprints, in a form  
22 consistent with the Department of Justice live-scan technology, of  
23 the person seeking to provide, or providing, child care or  
24 supervision, for the purpose of searching the criminal history  
25 information of the Department of Justice and the Federal Bureau  
26 of Investigation.

27 (c) The Department of Justice shall conduct the criminal  
28 history search of its records and shall ensure that a criminal history  
29 search is conducted by the Federal Bureau of Investigation using  
30 the second set of fingerprints.

31 (d) The criminal history information shall include the full  
32 criminal record, if any, and arrest information of the person who  
33 is providing, or is seeking to provide, child care or supervision.

34 (e) (1) If new fingerprints are required for processing, the  
35 Department of Justice shall, within five calendar days from the  
36 date of receipt of the fingerprints, notify the parent, other person,  
37 or organization who requested the information that the fingerprints  
38 are required.

39 (2) If no criminal history information has been recorded, the  
40 Department of Justice shall, within five calendar days of receipt of

1 the fingerprints, provide the person who requested the criminal  
2 history information with a statement of that fact.

3 (3) If criminal history information specified in subdivision (a)  
4 has been recorded, the Department of Justice shall, within five  
5 calendar days from the date of receipt of the fingerprints, provide  
6 the information to the parent, other person, or organization who  
7 requested it.

8 (f) The Department of Justice shall charge the parent, other  
9 person, or organization who requested criminal history  
10 information the fee that the department charges governmental  
11 agencies for criminal history searches.

12 (g) (1) For purposes of this chapter, a conviction means a plea  
13 or verdict of guilty, a conviction following a plea of nolo  
14 contendere, or an adjudication of a minor pursuant to Sections 601  
15 or 602 of the Welfare and Institutions Code.

16 (2) For purposes of this section, the record of a conviction, or  
17 a copy thereof certified by the clerk of the court or by a judge of  
18 the court in which the conviction occurred, shall be conclusive  
19 evidence of the conviction. For purposes of this chapter, the arrest  
20 disposition report certified by the Department of Justice, or  
21 documents admissible in a criminal action pursuant to Section  
22 969b of the Penal Code, shall be prima facie evidence of the  
23 conviction, notwithstanding any other provision of law  
24 prohibiting the admission of these documents in a civil or  
25 administrative action.

26 (h) If a parent, other person, or organization denies the  
27 employment or volunteer services, or terminates employment or  
28 volunteer services, of a person based on written notification from  
29 the Department of Justice that the prospective employee,  
30 employee, volunteer, or other provider of child care or supervision  
31 has a prior criminal conviction or arrest, the person shall not incur  
32 civil liability or unemployment insurance liability as a result of  
33 that denial or termination.

34 SEC. 2. This act is an urgency statute necessary for the  
35 immediate preservation of the public peace, health, or safety  
36 within the meaning of Article IV of the Constitution and shall go  
37 into immediate effect. The facts constituting the necessity are:

38 In order to ensure that persons and organizations that use the  
39 services of persons who provide child care and supervision can  
40 obtain criminal background information in an expedited manner,

- 1 and that organizations that establish mentor/mentee relationships
- 2 between adults and children are able to find safe mentors for
- 3 children, and to establish those relationship as quickly as possible,
- 4 it is necessary that this act take effect immediately.

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